TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 261.

HENRY FLEGENHEIM AND SIEGFRIED ROSENBERG, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 19, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 261.

HENRY FLEGENHEIM AND SIEGFRIED ROSENBERG, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Summons	3	2
Certiorari	5	2
Declaration	7	3
Bill of particulars	12	4
Plea	14	5
Trial of cause	16	6
Judgment	18	7
Bill of exceptions	20	7
Assignment of errors	24	9
Joinder on error	26	9
Bond on writ of error	28	10
Citation	30	11
Service	31	11

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Flegenheim and Siegfried Rosenberg, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-eight, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.
N. Y., October 4, 1878.

SAM'L BLATCHFORD.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Henry Flegenheim and Siegfried Rosenberg, plaintiffs in error, against Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of October, in the year of our Lord, one thousand eight hundred and seventy eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

(Indorsed:) 2608. U. S. Supreme Court. Henry Flegenheim et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Writ of error. Stanley, Brown & Clarke, att'ys for pl'ffs, &c., 195 B'way.

Due service of a copy of the within is hereby admitted.
N. Y., Oct 7., 1878.

S. L. WOODFORD,
U. S. Att'y.

3 *Summons for relief.*

Superior court of the city of New York.

HENRY FLEGENHEIM AND SIEGFRIED ROSENberg, plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.
} Com. not ser.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action which will be filed in the office of the clerk of the superior court of the city of New York at the court-house in said city, and to serve a copy of your answer to the said complaint, on the subscribers at their office, No. 16 Wall street, New York City, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated N. Y., September 19, 1873.

STANLEY, BROWN & CLARKE,
Plaintiff's Attorneys.

4 (Endorsed:) 2608. N. Y. superior c't. Henry Flegenheim et al. vs. Chester A. Arthur. Summons. Stanley, Brown & Clarke, plff's att'ys, 16 Wall st., N. Y. Received Oct. 1, 1873. U. S. attorney's office. Rec'd Sept. 19, '73.

5 The President of the United States of America to the judge of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you, against Chester A. Arthur, defendant, by Henry Flegenheim et al., plaintiffs, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court at the city of New York, on the 17th day of Nov., 1873, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Nathan Clifford, esquire, associate justice of the Supreme Court of the United States, the 11th day of November, in the year one thousand eight hundred and seventy-three.

[L. S.] KENNETH G. WHITE,
Clerk.

GEORGE BLISS,
Defendant's Attorney.

6 (Endorsed:) 2608. U. S. circuit court. Chester A. Arthur ads. H. Flegenheim et al. Copy certiorari. George Bliss, defendant's attorney.

SIR: Take notice that the within is a copy of a certiorari this day

issued out of the circuit court of the United States for the southern district of New York.

New York, Nov. 11, 1873.

Yours, &c.,

GEORGE BLISS,
Defendant's Attorney.

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Nov. 11, 1873.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys.

7 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, of the October term, in the year one thousand eight hundred and seventy-three.

HENRY FLEGENHEIM ET AL.
vs.
CHESTER A. ARTHUR. } No. 2.

Henry Flegenheim and Siegfried Rosenberg, copartners under the firm-name of Henry Flegenheim & Co., plaintiffs in this suit, come into court, and by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that heretofore, to wit, on the 19th day of September last past, this action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court. That the defendant afterwards, by his attorney, Geo. Bliss, esquire, duly appeared in said action; and thereupon, the 17th day of November, in the year one thousand eight hundred and seventy-three, the said action was duly removed by writ of certiorari for further prosecution into this
8 court, according to the act of Congress in such case made and provided; and the clerk of the said court did thereupon return the said writ with the said summons, and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that, whereas said defendant, on 19th day of September, eighteen hundred and seventy-three, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of one thousand dollars, lawful money of the United States of America, for duties on merchandise, to wit, manufactures of silk and cotton imported into and entered at the collection district of the United States for the city of New York on or about the 1st day of March, 1873, and on divers days thereafter, and until the 1st day of August, in the year one thousand eight hundred and seventy-three, in the following vessels, to wit, Westphalia, from Hamburg and Bremen, Main and Herrman, from Bremen, unlawfully demanded,
9 exacted, and received, at said New York City, by the said defendant, then collector of the customs for said district, under color of

a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing, in due form of law. And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendants, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for
10 the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards requested.

Nevertheless, said defendant (although often afterwards requested so to do) has not paid said sums of money, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

STANLEY, BROWN & CLARKE,
Attorneys for the Plaintiffs.

(Endorsed:) 2608. U. S. circuit court. H. Flegenheim vs. Chester A. Arthur. Declaration.

To GEO. BLISS, Esq.,
Def't's Att'y:

11 SIR: Please take notice that a rule has been entered in the book of common rules, in the office of the clerk of this court, at the city of New York, requiring the defendant to plead to the declaration in twenty days after service of a copy thereof and notice of said rule on his attorney, or judgment, &c.

New York, , 187 .

STANLEY, BROWN & CLARKE,
Attorneys for Plaintiffs, 16 *Wall Street.*

To GEO. BLISS, Esq.,
Def't's Att'y.

Received Dec. 23. 1873, U. S. attorney's office.

12 *Bill of particulars.*

Superior court, city of New York.

HENRY FLEGENHEIM AND AN'R
against
CHESTER A. ARTHUR, COLLECTOR OF THE CUSTOMS of the United States at the port of New York.

SIR: Please to take notice that the following is the bill of particulars

of items of the plaintiffs' demand in the above-entitled action, to wit: moneys exacted by compulsion and duress, and under color of the revenue laws of the United States, by the defendant, as collector as aforesaid, from and paid by the plaintiffs on merchandise imported by the plaintiffs, as per schedule hereto annexed, with legal interest on said amount from the date of payment thereof as aforesaid.

Dated New York, October 28, 1873.

Yours, &c.,

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys, No. 16 Wall Street, New York.

To GEORGE BLISS, Esq.,
Defendant's Attorney.

13 SCHEDULE.

[Importers, Henry Flegenheim & Co.]

Description of merchandise.	Place from whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty paid in excess.
H. F. & C., 3965, manuf's silk & cotton	Hamburg.	Westphalia	Feb. 15, 1873	March 14, 1873	25 50
H. (F) & C., 4112, do galloons and braids	Bremen	Bremen	June 14, "	Feb'y "	27 70
" 4068, do do	"	Main	May 3, "	May 24, "	
4157, do do	"	Hermann	June 28, "	July 22, "	12 70

Description of merchandise.	Date of payment of duty.	Date of filing protest.	Date of appeal to the Secretary of the Treasury.	Date of answer of the Secretary of the Treasury.
H. F. & C., 3965, manuf's silk & cotton	July 11, 1873	April 23, 1873	April 22, 1873	June 28, 1873
H. (F) & C., 4112, do galloons and braids	" 12, "	July 11, "	July 15, "	July 28, "
" 4068, do do	" 11, "	" "	" 11 "	" 26, "
4157, do do	" 22, "	" 29, "	" 29 "	Aug. 5, "

(Endorsed:) 2608. N. Y. superior court. Henry Flegenheim and an'r against Chester A. Arthur, collector of the customs of the United States at the port of New York. Bill of particulars. Stanley, Brown & Clarke, attorneys for plaintiff, No. 16 Wall street, N. Y. Received October 28, 1873, U. S. attorney's office. To George Bliss, esq., def't's att'y.

14 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
HENRY FLEGENHEIM & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his

attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq.,
Plaintiffs' Attorney'.

(Endorsed:) 2608. U. S. circuit court. C. A. Arthur ads. H. Flegenheim & al. Plea. Geo. Bliss, attorney for defendant.

Due service of a copy of within is hereby admitted.
New York, Jan. 6, 1874.

STANLEY, BROWN & CLARKE,
Per M. B.

15 You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York.

New York, Jan. 6, 1874.
Yours, &c.,

GEO. BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq's,
Plaintiffs' Attorney'.

16 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-seven—

Present, the honorable Judge Shipman, circuit judge.

HENRY FLEGENHEIM } 2608
vs.
CHESTER A. ARTHUR. }

On motion of S. G. Clarke, esq'r, of counsel for the plaintiff, ordered trial.

Jurors sworn: John Jackson, Geo. F. Valentine, Joseph W. Duryea, David B. Keeler, Thomas Cable, Herman Nordlinger, Richard Irwin, jr., Chas. Althof, J. O. Monheimer, Chas. Fowler, Jas. H. Davidson, Jas. B. Newton.

Mr. Clarke opened the cause on the part of the plaintiff.

Evidence for the plaintiff.

Plaintiffs' entries, invoices, and protest.
Thos. W. Gibson sworn.
Plaintiff rests.

17 Defendant rests and offers no evidence.

Assistant U. S. Attorney Henry E. Tremain, of counsel for the defendant, moves that the court either direct the jury to find a verdict for the defendant, or order the complaint to be dismissed.

Mr. Clarke moves that the court direct the jury to find a verdict for the plaintiff.

The court reserves its decision upon said motion, and orders that the case be adjourned for one week, unless the jury are sooner notified to attend.

On Tuesday, Oct. 23, 1877, the court directs a verdict for the defendant.

On motion of Mr. Clarke, ordered that the plaintiff have thirty days in which to make and prepare a case, with leave to turn the same into a bill of exceptions.

18 *Judgment.*

United States circuit court, southern district of New York.

HENRY FLEGENHEIM & AL.
vs.
C. A. ARTHUR.

The issues of this action having been brought on for trial before Mr. Judge Shipman and a jury, at a circuit court of the October term, 1877, and the issues having been tried, and a verdict for the defendant having been duly rendered on the sixteenth day of October, 1877, and his costs having been adjusted at $48.97, now, on motion of Stewart L. Woodford, United States attorney for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.97, his taxed costs, and have execution therefor.

Judgment signed this 15 day of Jan'y, 1878.

J. M. DEUEL, *Dep. Clerk.*

19 (Indorsed:) 2608. United States circuit court. Henry Flegenheim & al. vs. C. A. Arthur. Judgment roll. Stewart L. Woodford, United States attorney, for defendant. Costs, $48.97. U. S. circuit court. Filed Jan. 15, 1878. John I. Davenport, clerk.

20 *Bill of exceptions.*

Circuit court of the United States for the southern district of New York, in the second circuit.

HENRY FLEGENHEIM & SIEGFRIED ROSENBERG
vs.
CHESTER A. ARTHUR.

Afterwards, to wit, on the 16th day of October, 1877, at a stated term of this court, begun and holden at the city of New York, to wit, on the third Monday of October, 1877, before the honorable Nathaniel Shipman, district judge of the United States for the State of Connecticut, appointed to hold the said circuit court, according to the form of the statute in such cases made and provided; the aforesaid issue so joined as between the said parties as aforesaid, as by the record more fully appears, came on to be tried by a jury duly empanelled and sworn for that purporse, the said plaintiffs being represented by Stephen G. Clarke, esq., and the said defendant by H. E. Tremain, esq.

21 And in the course of the trial the said counsel for the plaintiffs did take and allege sundry exceptions to the rulings and charge

of the court, and to the refusal of the court to give certain instructions to the jury, as then and there prayed for by them, which said exceptions are hereinafter severally set forth.

To maintain the said issues on the part of the plaintiffs, counsel for the said plaintiffs having produced invoices, entries, and protests, and proved the importation of the goods in question, and the payment of duty at the rate of sixty per cent. ad valorem, called a witness, who, being sworn, testified to facts constituting him an expert, and being further examined, testified as follows:

Q. I call your attention to invoices by the Hermann, dated June 28, 1873, and to the goods there indicated by the pattern number 946, and ask you what are those articles?

A. Galloons or braids.

Q. Of what material are they composed?

A. Silk and cotton.

Q. Which material is of chief value?

A. Silk.

Q. Are similar articles described in the other invoices in evidence?

22 A. Yes.

It appeared from the invoices that the appraiser classified the goods in question as silk braids, or silk galloons. The substantial portion of plaintiffs' protest against the said exaction of sixty per centum was as follows, viz:

"The ground of our dissatisfaction, objection, and protest, both against said liquidation and against any and every payment which he may be required to make, or may make thereunder, is that the merchandise aforesaid is only liable under existing laws to a duty of fifty per centum ad valorem, being manufactures of silk and cotton not otherwise provided for."

No question being made as to the regularity of protests, appeals, and decisions, plaintiffs rested.

No testimony was offered in behalf of the defendant.

Plaintiffs' counsel requested the court to charge the jury that upon the undisputed facts in the case, plaintiffs were entitled to recover, and, the court refusing so to instruct the jury, plaintiffs' counsel duly excepted thereto.

Thereupon the court instructed the jury to find for the defend-

23 ant, to which instruction counsel for plaintiffs then and there duly excepted.

And because none of the said exceptions so offered and made to the opinion, instructions, and decisions of the court do appear upon the record of the said trial, therefore, on the prayer of the said plaintiffs by their counsel, the said judge has to this bill of exceptions put his seal, as of the 16th day of October, 1877.

[L. S.] A. SHIPMAN, *Judge.*

(Endorsed:) 2608. U. S. circuit court, so. dist. of N. Y. Henry Flegenheim et al., plaintiffs, against Chester A. Arthur, defendant. Bill of exceptions. Stanley, Brown & Clarke, attorneys for pl'ffs, 195 Broadway, New York. Circuit court of the U. S. Filed Nov. 13, 1877. John I. Davenport, clerk.

24 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-eight.

HENRY FLEGENHEIM AND SIEGFRIED ROSENberg
vs.
CHESTER A. ARTHUR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said Henry Flegenheim and Seigfried *Flegenheim*, by Stephen G. Clarke, esq., their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that there was error in the refusal of the court to direct a verdict for the plaintiffs in error, as therein prayed for, and in the direction of the court to the jury that the defendant was entitled to a verdict, and also in that judgment was given for the defendant in error against the plaintiffs in error, whereas by the law of the land judgment ought to have been given for the said plaintiffs in
25 error against said defendants in error, and the said plaintiffs pray that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that they may be restored to all things which they have lost by occasion of the said judgment.

STEPHEN G. CLARKE,
Att'y for Pl'ff's in Error.

(Endorsed:) 2608. Supreme Court of the United States. Henry Flegenheim et al. vs. Chester A. Arthur. Assignment of errors. Stephen G. Clarke, att'y for pl'ffs in error, 195 Broadway.

Due service of a copy of the within is hereby admitted.
N. Y., Oct. 10, 1878.

STEWART L. WOODFORD,
U. S. Attorney, Att'y for Def't.

26 Supreme Court of the United States.

HENRY FLEGENHEIM & SIEGFRIED ROSENberg, plaintiffs in error,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

And afterwards, to wit, on the second Monday of October, 1878, the said Chester A. Arthur, defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error, either in the record or proceedings aforesaid or in the giving of the judgment aforesaid, and he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

27 STEWART L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) Supreme Court of the United States. Henry Flegenheim & al., pl'ffs in error, vs. C. A. Arthur, def't in error, joinder in error. Stewart L. Woodford, U. S. Att'y, att'y for def't in error.

Service of a copy of the within joinder in error, is hereby admitted. New York, Oct. 10, 1878.

STEPHEN G. CLARKE,
Att'y for Pl'ff's in Error.

U. S. circuit court. Filed October 10, 1878.
JOHN I. DAVENPORT, *Clerk.*

28 *Bond for costs.*

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

HENRY FLEGENHEIM & SIEGFRIED ROSENBERG
vs.
CHESTER A. ARTHUR.

Know all men by these presents, that we, Melvin Brown, of No. 96 Waverly avenue, Brooklyn, N. Y., and Isaac Phillips, of No. 324 West 22nd street, New York City, are held and firmly bound unto the above named Chester A. Arthur, in the sum of two hundred & fifty dollars, to be paid to the said Chester A. Arthur, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the fourth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas, the above named Henry Flegenheim & Siegfried Rosenberg have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named plaintiffs shall prosecute said writ of error to effect and answer all damages and costs if they fail to make said writ of error good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

MELVIN BROWN. [L. S.]
ISAAC PHILLIPS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 4th day of October, 1878, before me.

C. W. BENNETT,
Notary Public, N. Y. Co.

29 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Melvin Brown and Isaac Phillips, severally, being duly sworn, each deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

MELVIN BROWN.
ISAAC PHILLIPS.

Sworn to this 4th day of October, A. D. 1878, before me,
C. W. BENNETT,
Notary Public, N. Y. Co.

(Indorsed:) Vol. , page . U. S. circuit court. Henry Flegenheim et al. vs. Chester A. Arthur. Damages. Bond for costs on writ of error. Stanley, Brown & Clarke, proctor'.

Approved Oct. 4, 1878.

SAM'L BLATCHFORD.

U. S. circuit court. Filed Oct. 4, 1878.

JOHN I. DAVENPORT, *Clerk.*

30 UNITED STATES OF AMERICA, *ss:*

To Chester A. Arthur, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Henry Flegenheim and Siegfried Rosenberg are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated New York, October 4, 1878.

SAM'L BLATCHFORD.

31 (Indorsed:) 2608. U. S. Supreme Court. Henry Flegenheim et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Citation. Stanley, Brown & Clarke, att'ys for pl'ffs, &c., 195 B'way.

Due service of a copy of the within is hereby admitted.
N. Y., Oct. 7, 1878.

S. L. WOODFORD, *U. S. Att'y.*

U S. circuit court. Filed Oct. 7, 1878.

JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 261. Henry Flegenheim and Siegfried Rosenberg, plaintiffs in error, vs. Chester A. Arthur, collector of the port of New York. S. New York C. C. U. S. Filed 12th October, 1878.

EVENING POST PRINT, 208 B'way, N. Y.

October Term, 1880.

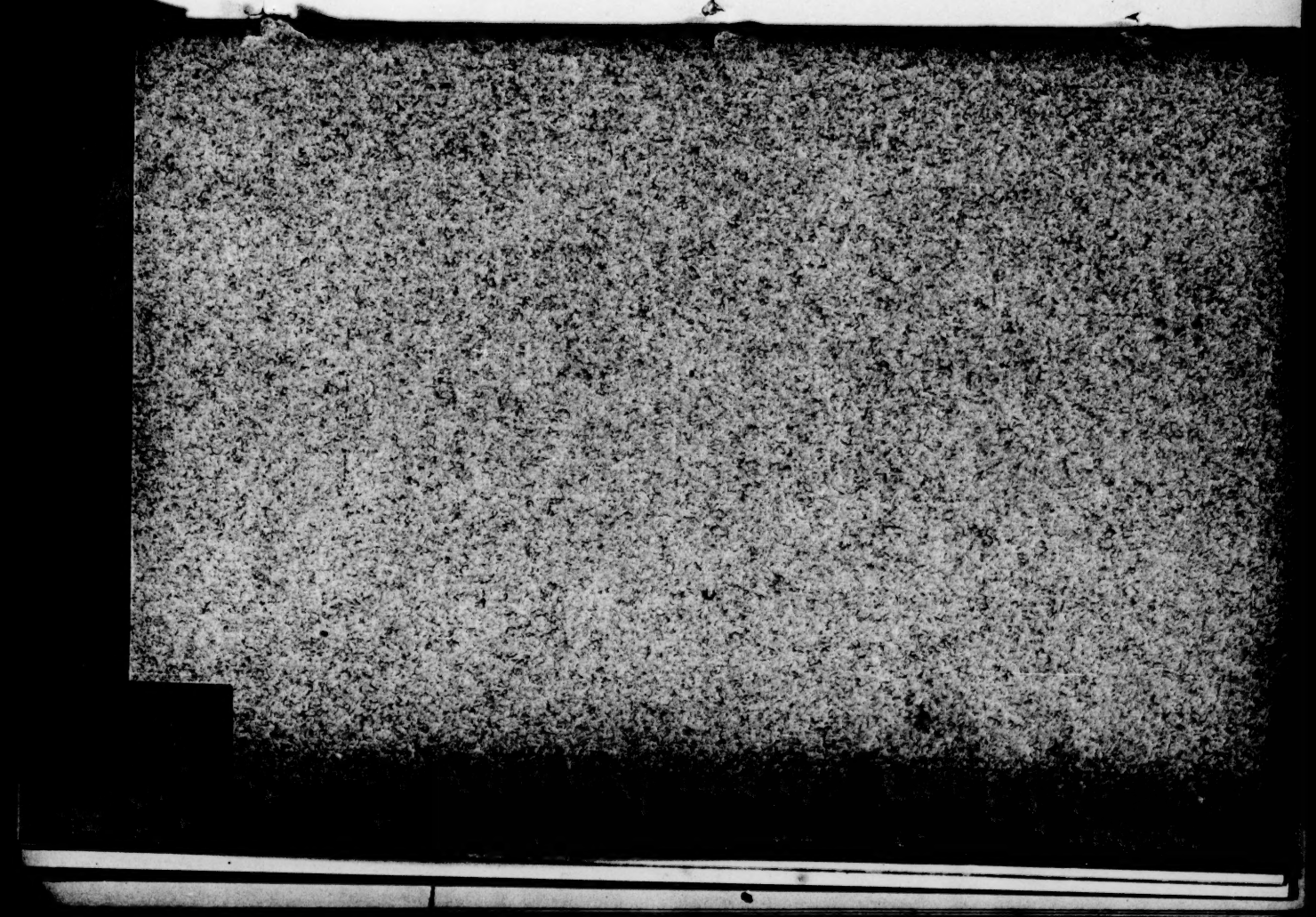
JOSEPH SWAN
vs.
CHESTER A. ARTHUR.
No. 221.

HERMAN FLEITMAN ET AL.
vs.
CHESTER A. ARTHUR.
No. 222.

HENRY FLEGENHEIM ET AL.
vs.
CHESTER A. ARTHUR.
No. 261.

Briefs for Plaintiffs.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET
1881.



EVENING POST PRINT, 208 B'way, N. Y.

In the Supreme Court.

JOSEPH SWAN

vs.

CHESTER A. ARTHUR, COLLECTOR, &c.

Oct. Term, 1880.—*No.* 221.

In error to the Circuit Court for the Southern District of New York.

Brief in behalf of Plaintiff in Error.

STATEMENT.

Plaintiff imported in 1873, a quantity of laces. They were composed of two materials, silk and cotton. Silk was the component material of chief value (Record, fol. 19).

The collector exacted sixty per cent. duty on the importations, under section eight of the Act of June 30, 1864, which lays that duty upon "silk laces." The plaintiff claimed that they were dutiable under the last clause of that section, which is as follows: "On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per cent. *ad valorem*."

No evidence was given that the goods in question were known in trade and commerce as "silk laces," nor was any

claim made that they were so known. On the contrary, it appears that the appraiser classified them simply as laces (Record, fol. 20), and the testimony shows conclusively that they were laces, composed of silk and cotton, and that silk was the component material of chief value.

Errors Assigned.

The court erred in refusing to direct a verdict for plaintiff, and in directing a verdict for the defendant (Record, fol. 20).

The court erred in the admission of the following question and answer (Record, page 8):

"Q. Are they substantially of silk?

(Objected to by plaintiff's counsel upon the ground that as the goods contain cotton, the amount of cotton is immaterial, unless it is proposed to be shown by defendant that commercially the goods in question are known as silk laces, and an answer to the question does not tend to establish that fact; no objection is made to the form of the question; defendant insists he has a right to the fact called for by the question.)

Question admitted and plaintiff excepts.

A. They are."

POINTS.

I.

The goods were dutiable under the last clause of the eighth section of the act of 1864. They were not in fact silk laces.

The question in the case was whether the goods were "silk laces;" whether they were "manufactures of which silk was the component material of chief value not otherwise provided for."

There was no dispute that the goods were manufactures of which silk was the component material of chief value, and the only question left, was whether they were "otherwise provided for." They were not "otherwise provided for," unless they were provideed for under the term "silk laces." The record, as we have seen, shows they were made partly of silk and partly of cotton, and, therefore, not in fact "silk laces," although the quantity of silk preponderated and brought them within the last clause of the section above referred to. In the statute, as it then stood, no distinction was made in the silk section as to articles not provided for. All the non-enumerated manufactures of silk and all manufactures of which silk was a component of chief value were alike dutiable at fifty per centum. Certain *silk* articles provided for by name were dutiable at sixty per cent.

Besides, the answer given under objection by the same witness who testified that the goods were made partly of silk and partly of cotton, that they were substantially of silk, simply affirmed the previous testimony of the witness, that silk was the component material of chief value. The witness may have meant simply that they had a preponderance of silk, or two-thirds of silk, or nine-tenths of silk, or more or less. The testimony was equivocal, at least, as to the extent of silk, and raised no presumption that the goods were wholly of silk, or that they were to be deemed commercially silk goods.

II.

The court erred in directing a verdict for defendant.

Plaintiff having given evidence that the laces were made of silk *and cotton*, had given evidence that the goods were not, *in fact*, "silk laces," because the ordinary and dictionary meaning of the term "silk laces" means *laces made of silk*. There was no evidence to show that the term "silk laces" was a commercial term having a meaning different from the ordinary signification of the words, and the court could not assume that

without evidence, and therefore, upon the proofs, plaintiff had made at least a *prima facie* case. The court could not take judicial notice that any peculiar commercial meaning was attached to the phrase "silk laces," if it were true, nor was the plaintiff obliged to prove a negative. The evidence that the laces were composed of silk or cotton was, if plaintiff was not entitled to a verdict, at all events, evidence competent to go to the jury on the question whether the laces were "silk laces" commercially, and for that reason the direction was plainly erroneous.

III.

The court below erred in admitting the evidence objected to on page 8 of the Record.

The District Attorney asked: "Are they substantially of silk?"

The ground of objection appears clearly and concisely upon the Record, "that as the goods contain cotton, the amount of cotton is immaterial, *unless it is proposed to be shown by defendant that commercially the goods in question are known as silk laces.*" The defendant did not offer to prove that allegation.

If the theory of the District Attorney and of the court below is sustained, the statute ought to have read "upon silk vestings, &c., &c., and upon all such articles when *substantially* of silk."

It is submitted that the sixty per cent. rate of duty applies only to such enumerated goods as are in fact silk and to such other enumerated goods not all silk as are commercially known and dealt in as silk goods. If this is so, the question and answer should have been excluded.

It is impossible to tell what "substantially silk" means. Is it 99 or 90 or 75 per cent.? It is the length of the Chancellor's foot. One man's "substantially" would be very different from that of another. There would be no certainty as to goods having an admixture of cotton.

STEPHEN G. CLARKE,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1880.

HERMAN FLEITMAN *et al.*,

vs. No. 222.

CHESTER A. ARTHUR, *Collector, &c.*

In error to the Circuit Court for the Southern District of New York.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

STATEMENT.

Plaintff importedin 1873 and '74 a quantity of segar ribbons. They were composed of two materials, silk and cotton. Silk was the component material of chief value (Record. fols. 18, 19.)

The collector exacted sixty per cent. duty on the importations, under section eight of the Act of June 30, 1864,. The plaintiff claimed that they were dutiable under the last clause of that section, which is as follows: "On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per cent. *ad valorem*."

The court below, subject to plaintiffs' exceptions, admitted testimony as to other classes of ribbons not entirely made of

silk being known in trade as silk ribbons. The specific question objected to being: "Describe as to the material, the ribbons that are ordinarily bought and sold in this market under the general description in trade of silk ribbons?" Independent of such testimony, the only evidence in the case was on the part of the plaintiffs that the goods were invoiced and entered as "silk and cotton segar ribbons;" that they contained silk and cotton, the silk being of chief value; that they were usually sold in the trade as silk and cotton ribbons, but that they also went under the designation of cigar ribbons. (Record, page 8.) The Court in its charge instructed the jury that the sixty per cent. rate applied to all silk ribbons "or all ribbons substantially of silk," and left it to the jury to inquire in the first instance whether these were substantially of silk. (Record, vol. 22.)

ERRORS ASSIGNED.

The court erred in admitting the testimony in pursuance of the question: "Describe, as to the material, the ribbons that are ordinarily bought and sold in this market under the general decription in trade of silk ribbons?" and in allowing said question. The court erred in refusing to direct a verdict for the plaintiff. (Record, fol. 21.)

The court erred in charging the jury in substance that if they found the goods to be substantially silk although containing some admixture of cotton they must find for the defendant.

The Court erred in refusing plaintiff's several requests to charge as set forth in the record, page 10.

POINTS.

The questions arising upon this record are, in the main, similar to those in No. 221 and are considered in my brief in that case.

The first error assigned presents an additional question: That there were various articles received in trade, as silk

ribbons, which were sometimes made of silk and sometimes of silk and cotton, did not tend to prove that the goods imported by plaintiffs were so received. It was not even shown that any similarity existed between these goods and those spoken of by witness further than that they were ribbons.

If this testimony had been excluded there would have been no conflicting evidence and the plaintiffs would have been entitled to a verdict.

STEPHEN G. CLARKE,
Counsel for Plaintiffs in error.

U. S. Supreme Court.

HENRY FLEGENHEIM ET AL.,
Plaintiffs in Error,

vs.

CHESTER A. ARTHUR,
Defendant in Error.

Oct., 1880. *No.* 261.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

The plaintiffs, in the year 1873, imported certain galloons or braids composed of silk and cotton, of which the silk was the material of chief value.

The defendant, as collector, exacted a duty of sixty per centum *ad valorem*.

The plaintiffs duly protested against the payment of that rate, claiming that under existing laws said goods were only liable to a duty of fifty per centum *ad valorem*, as manufactures of silk and cotton not otherwise provided for.

Record, page

The controversy arises under the eighth section of the Act of June 30, 1864, the material portion of which is as follows:

"On silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mits, aprons, stockings, gloves, suspenders, watch chains, webbing, braids, fringes, galloons, tassels, cords, and trimmings, sixty per centum *ad valorem*.

"*On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per centum ad valorem.*"

Act of June 30, 1864, § 8, 13 Stat. at Large, 210.

The portion italicised is the clause under which the importer claims. The collector assessed the duty under the provision for silk braids or silk galloons.

Errors Assigned.

The court erred in refusing to direct a verdict for the plaintiffs.

The court erred in directing a verdict for the defendant.

POINTS.

The articles in question are manifestly dutiable at fifty per centum, as manufactures of which silk is the component material of chief value, unless they are otherwise provided for. They are not otherwise provided for, unless they come within the description of "*silk* galloons."

They were not in fact silk galloons, and no evidence was introduced tending to show that they were known in trade and commerce as silk galloons, or were ever sold as a pure silk article.

The rule is quoted by this court with approbation, in Arthur *vs.* Morrison, that "where general terms are used, the terms are to be taken in their ordinary and comprehensive meaning, unless it is shown that they have, in their commercial use, acquired a special and restricted meaning."

96 U. S., 108, 110.

If there is no special or restricted or enlarged meaning to the term silk galloons, and none is shown by the record, the term must be taken in its ordinary sense. The ordinary sense of the term silk does not mean an article made of silk and some other material. That by usages of trade an article not all of silk might be commercially a silk article is not here in dispute. Silk shirts and drawers are constantly bought and sold as such, although in fact partly of cotton, and such being the case, no importer has claimed them to be liable to less than sixty per cent. duty. Where, however, no question of trade usage or denomination arises, an article made of silk and cotton must, in the ordinary sense of the words, be deemed a silk and cotton article, and if, as in the present case, the silk is the component material of chief value, the article comes within the descriptive enumeration of the last clause of the section before cited.

Said Mr. Justice BRADLEY, delivering the opinion of the court at the present term, in the case of Solomon *vs.* Arthur:

"Since, therefore, the designation, in the Act of 1861, of 'manufactures composed of mixed materials, in part of cotton, silk,' &c., is merely descriptive; and since the designation in the Act of 1864, of 'manufactures of which silk is the component part of chief value,' is also descriptive; and since the goods in question are confessedly embraced in both descriptions; and since the Act of 1864 contains no provision relating to mixed goods, like that in the Acts of 1861 and 1862, and lays a duty of 50 per cent. *ad valorem* on goods in which silk is the component part of chief value 'not otherwise provided for' (which we have construed generally to mean 'not otherwise provided for in this act;' Smythe *vs.* Fiske, 23 Wallace, 374); it seems to be almost a matter of demonstration, that this was the duty properly demandable on the goods.

It is observable that the description of 'manufactures

made of mixed materials, in part of cotton, silk, &c.,' is more general than that of 'manufactures of which silk is the component part of chief value.' Logically, the two phrases, standing together in the same act, or system of laws, would be related as follows: 'Goods made of mixed materials, cotton, silk, &c., shall pay a duty of 35 per cent.; *but if* silk is the component part of chief value, they shall pay a duty of 50 per cent."

STEPHEN G. CLARKE,
Counsel for Plaintiff.

SUPREME COURT, U. S.
FILED
JAN 10 1881
JAMES H. McKENNEY, CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

JOSEPH SWAN
v.
CHESTER A. ARTHUR. } No. 221.

DEFENDANT'S BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

JOSEPH SWAN
v.
CHESTER A. ARTHUR. } No. 221.

DEFENDANT'S BRIEF.

STATEMENT.

Plaintiff imported certain goods into New York in 1872, which were declared, by his testimony, to be laces, made of silk and cotton, the former being the material of chief value. Upon cross-examination, it was shown (against plaintiff's objection) that they were "substantially of silk." Thereupon the jury were directed to return a verdict for the defendant. (Record, 7, 8.)

The goods had been assessed by Collector Arthur, with duty at 60 per cent., as laces of silk, under the act of June 30, 1864, section 8, while the importer claimed them to be dutiable at 50 per cent. under the last clause of the same section, as a manufacture of which silk was the component of chief value. (13 Stats., 210.)

The plaintiff rests upon the physical fact that there was *some* cotton in these goods, however trifling an element it formed in their composition. He would claim a lower duty if there were but a single cotton thread woven into the fabric, for the very purpose of evading the tariff.

On the contrary, the court sustained the ruling of the Treasury Department, made January 6, 1871, and found at the bottom of page 65 of the last edition (A. D. 1879) of Heyl's Digest, that if vestings containing a very small proportion of cotton, but mainly of silk, were sold as an article of pure silk, they were properly classified for duty at sixty per cent. (under the section aforesaid) as silk vestings.

The government did not claim that they were known commercially by the single name of "silk laces," because they were bought and sold under specific names for each different style. It was contended that, being laces, made substantially of silk, they came within the category of this section, which enumerates "silk vestings, pongees, shawls, scarfs, mantillas, pellerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans," &c. The court construed the phraseology of this section according to the ordinary use of language. We speak of articles being packed in a wooden box, although the sides, and bottom, and top of the box are fastened together with nails. We speak of wooden ships, even if copper-fastened; we do not imagine that a wooden vessel must be held together only by treenails. An iron steamship is known as an iron steamship, although it be

equally well known that her deck, cabin, finish, &c., are of wood. Accordingly, spectacles, composed of steel or gold or horn bows encircling the lenses, are dutiable as manufactures of glass. (Arthur *v.* Sussfield, 96 U. S., 128.)

Further discussion is postponed until the plaintiff's brief is filed.

EDWIN B. SMITH,
Assistant Attorney-General.

O

OFFICE SUPREME COURT U. S.
FILED
JAN 10 1881
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

FLEITMAN
v.
ARTHUR. } No. 222.

DEFENDANT'S BRIEF.

This case is like its immediate predecessor, with this immaterial difference, that in the former the importations were laces and in this were ribbons. In each the goods were substantially of silk, and upon this ground were treated as "silk ribbons" under the act of June 30, 1864, § 8, instead of being a manufacture of which silk is the component of chief value, under the last clause of the same section. Nothing need be added to what is said in No. 221 until the plaintiff in error is heard from.

EDWIN B. SMITH,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

FLEGENHEIM v. ARTHUR. } No. 261.

DEFENDANT'S BRIEF.

The facts in this case are plainly stated upon folios 21 and 22 of the record.

From such statement it appears that the goods in question (imported June 28, 1873) were galloons or braids composed of silk and cotton, the former being the material of chief value. These were classified by the appraiser as "silk" braids or "silk" galloons, and thereupon a duty was exacted upon them at the rate of 60 per cent.

Upon the trial below the court was of opinion that this was correct. But the plaintiffs in error—the importers—contended that within the revenue law the goods were only "manufactures of silk and cotton not otherwise provided for," and so liable to a duty of only 50 per cent., and thereupon they excepted to the instructions given as above.

The statute in question, that of 1864, ch. 171, sec. 8 (13 Stat., 210), is as follows:

On spun silk for filling in skeins or cops, twenty-five per centum ad valorem. On silk in the gum not more advanced than singles, tram, and thrown or organzine, thirty five per centum ad valorem. On floss silks, thirty-five per centum ad valorem. On sewing silk in the gum or purified, forty per centum ad valorem. On all dress and piece silks, ribbons, and silk velvets, or velvets of which silk is the component material of chief value, sixty per centum ad valorem. On silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mits, aprons, stockings, gloves, suspenders, watch chains, webbing, *braids*, fringes, *galloons*, tassels, cords, and trimmings, sixty per centum ad valorem.

On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per centum ad valorem. (13 Stats., 210.)

BRIEF.

In this case that of Lane *v.* Russell (12 Int. Rev. Rec., 105), tried at May term, 1870, of the United States circuit court in Massachusetts, before Clifford and Lowell, JJ., was followed.

It proceeds upon the well-known fact, of which cognizance may be taken judicially, that many of the articles enumerated in the eighth section of the act of June 30, 1864, "such as pongees, shawls, scarfs, mantillas," &c., though described and spoken of as silk, are or may be made in part of other materials. Then the concluding 50 per cent. clause means that all *other* manufactures of which silk is the sole or chief constituent, beside those just before specified, shall pay this lower rate of duty.

Taking the section together, it intends that the enumerated articles, being *substantially* silk braids, galloons, &c.—whether silk be the exclusive material or merely that of chief value—shall pay 60 per cent., and the non-enumerated articles of like composition 50 per cent. The distinction created is between enumerated and non-enumerated manufactures; not between those wholly of silk and those chiefly of that textile.

As braids and galloons are specified, it is more appropriate to thus construe that clause so as to embrace these goods, than to bring them under the general term "manufactures." The specific ought to prevail over the general. Arthur *v.* Lahey, 96 U. S., 112, 113, § 2; Arthur *v.* Rheims, *id.*, 143; Thorpe *v.* Lawrence, 1 Blatchf.,

351; Sill *v.* Lawrence, *id.*, 605; Cohen *v.* Phelps, 2 Sawyer, 530, and 19 Int. Rev. Rec., 67; Jaffray *v.* Murphy, 19 Int. Rev. Rec., 143.)

EDWIN B. SMITH,
Assistant Attorney-General.